

**Office of Drug Enforcement and Program Compliance**  
**49 CFR Part 40 Interpretation**

**Question:** In a case where an employee is providing a urine specimen and a breath test is conducted at the same time, can a laboratory receive both the Federal Drug Testing Custody and Control Form (with the specimens for testing) and the employer's copy of the Breath Alcohol Testing Form (with the test results) from the collection site?

**Response:** Sections 40.23(a)(6) states in part "*...personal identifying information on the donor (other than the social security number) may not be provided to the laboratory.*" The Department has interpreted this to mean that information which would identify an individual should not be routinely provided to the laboratory. Additionally, Section 40.65(i)(2) states in part "*...the BAT shall ensure immediate transmission to the employer of results...*"

The Department provided further clarification in its Guidance on the Role of Consortia and Third-Party Administrators in DOT Drug and Alcohol Testing Programs published on July 25, 1995 in the Federal Register which stated in part "*...MROs and BATs must send final individual test results directly to the actual employer as soon as the results are available ...results may be maintained afterwards by the C/TPA...while there is no objection to the MRO or BAT transmitting results simultaneously both to the employer and to the C/TPA, it is not appropriate for the MRO or BAT to send the results only to the C/TPA, which subsequently retransmits them to the employer.*"

A laboratory, regardless of what type of arrangement it has with the employer, is prohibited from receiving the employer's copy of the Breath Alcohol Testing Form together with the Federal Drug Testing Custody and Control Form(s) which accompany the urine specimen. The breath testing form contains individual identifying information. The DOT rule specifically states that this information may not be provided to a laboratory.

However, a laboratory functioning as a consortium/third party administrator (C/TPA) may receive the employer's copies of the Federal Drug Testing Custody and Control Form and the employer's copy of the Breath Alcohol Testing Form from the collection site under the following provisions:

- a. The employer's copy of the Federal Drug Testing Custody and Control Form (Copy 7) must not be included with the laboratory copies (Copies 1 and 2) which accompany the urine specimen.
- b. The employer's copies of the Federal Drug Testing Custody and Control Form and the Breath Alcohol Testing Forms must not be received by the accession/receiving (testing) section of the laboratory.

These procedures should prevent that portion of the laboratory which conducts the drug analysis from having access to the identity (from the alcohol testing form) of the donor.

The DOT rule requires the BAT to immediately transmit the results to the employer, regardless of what procedures have been established for providing to the employer or the C/TPA, the employer's copy of the breath testing form.

In all instances, it is the employer (not the C/TPA) who designates in writing to the BAT or the BAT's company, who the employer's agent is and the procedures that the employer wants the BAT to use for transmission of data and forms.

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